

**Notice of Allowability**

Application No.

09/728,748

Examiner

Annette H. Para

Applicant(s)

PHILPOTT, HEATHER

Art Unit

1661

**-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address--**

All claims being allowable, PROSECUTION ON THE MERITS IS (OR REMAINS) CLOSED in this application. If not included herewith (or previously mailed), a Notice of Allowance (PTOL-85) or other appropriate communication will be mailed in due course. **THIS NOTICE OF ALLOWABILITY IS NOT A GRANT OF PATENT RIGHTS.** This application is subject to withdrawal from issue at the initiative of the Office or upon petition by the applicant. See 37 CFR 1.313 and MPEP 1308.

1. ☒ This communication is responsive to Appeal Brief submitted on June 04, 2007.
2. ☒ The allowed claim(s) is/are 1.
3. ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some\* c) ☐ None of the:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

\* Certified copies not received: \_\_\_\_\_.

Applicant has THREE MONTHS FROM THE "MAILING DATE" of this communication to file a reply complying with the requirements noted below. Failure to timely comply will result in ABANDONMENT of this application.  
**THIS THREE-MONTH PERIOD IS NOT EXTENDABLE.**

4. ☐ A SUBSTITUTE OATH OR DECLARATION must be submitted. Note the attached EXAMINER'S AMENDMENT or NOTICE OF INFORMAL PATENT APPLICATION (PTO-152) which gives reason(s) why the oath or declaration is deficient.
5. ☐ CORRECTED DRAWINGS ( as "replacement sheets") must be submitted.
- (a) ☐ including changes required by the Notice of Draftsperson's Patent Drawing Review ( PTO-948) attached
- 1) ☐ hereto or 2) ☐ to Paper No./Mail Date \_\_\_\_\_.
- (b) ☐ including changes required by the attached Examiner's Amendment / Comment or in the Office action of Paper No./Mail Date \_\_\_\_\_.
- Identifying indicia such as the application number (see 37 CFR 1.84(c)) should be written on the drawings in the front (not the back) of each sheet. Replacement sheet(s) should be labeled as such in the header according to 37 CFR 1.121(d).
6. ☐ DEPOSIT OF and/or INFORMATION about the deposit of BIOLOGICAL MATERIAL must be submitted. Note the attached Examiner's comment regarding REQUIREMENT FOR THE DEPOSIT OF BIOLOGICAL MATERIAL.

**Attachment(s)**

- |  |  |
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| 1. <input type="checkbox"/> Notice of References Cited (PTO-892)   | 5. <input type="checkbox"/> Notice of Informal Patent Application                      |
| 2. <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                       | 6. <input type="checkbox"/> Interview Summary (PTO-413),<br>Paper No./Mail Date _____. |
| 3. <input type="checkbox"/> Information Disclosure Statements (PTO/SB/08),<br>Paper No./Mail Date _____    | 7. <input type="checkbox"/> Examiner's Amendment/Comment                               |
| 4. <input type="checkbox"/> Examiner's Comment Regarding Requirement for Deposit<br>of Biological Material | 8. <input checked="" type="checkbox"/> Examiner's Statement of Reasons for Allowance   |
|  | 9. <input type="checkbox"/> Other _____.   |

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Reason For Allowance

The following is an examiner's statement of reasons for allowance:

The information regarding the Veronica plant cultivar Glory was available to persons of ordinary skill in the art in the application number 971485 filed in the European Community. The application was published on February 16, 1998. This printed publication was accessible to the public more than one year prior to filing of the instant application. A publication relied upon as prior art under 35 USC 102(b) must be enabling. The text of the relied upon publications standing alone would not enable one skilled in the art to practice the claimed invention.

When the claim is drawn to a plant, the reference, combined with knowledge in the prior art, must enable one of the ordinary skilled in the art to obtain or reproduce the plant. *In re Le Grice*, 301 F.2d 929, 133 USPQ 365 (CCPA 1962). If one skilled in the art could obtain and reproduce the plant from a publicly available source, then a publication describing the plant would have an enabling disclosure.

As stated in the affidavit of Michael Dunnett, Blakedown Nurseries (p.1-2) purchased 100 plants of Veronica 'Glory' in May of 1998. These 100 plants that were purchased from the inventor were never sold or publicly distributed. The plants were used for testing and propagation to build an inventory of plants. As stated in the attached affidavit of Michael Dunnett, a market test was performed in April of 1999, which is less than a year prior to the filing date of the present application.

Therefore, the printed publication number 971485 cannot be enabled because the disclosed cultivar has not been propagated or obtained from publicly available materials more than a year prior to the date of the present application.

The specification provides a complete botanical description of the claimed plant. The completeness of the description is sufficient to distinguish this new plant from the prior art as well it is sufficient to distinguish future application from this observed plant.

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Any comments considered necessary by applicant must be submitted no later than the payment of the issue fee and, to avoid processing delays, should preferably accompany the issue fee. Such submissions should be clearly labeled "Comments on Statement of Reasons for Allowance."

Future Correspondence

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Annette H. Para whose telephone number is (571) 272-0982. The examiner can normally be reached Monday through Thursday from 5:30 a.m. to 4:00 p.m.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Anne Marie Grunberg, can be reached at (571) 272-0975. The fax number for the organization where the application or proceeding is assigned is (571) 273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either the Private PAIR or the Public PAIR. Status information for unpublished applications is available through the Private PAIR only.

For more information about the PAIR system, see <http://pair-direct.uspto.gov> . Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

/Annette H Para/

KENT BELL  
PRIMARY EXAMINER

